Department of Defense

FOIA

Website Compliance

March 6, 2008

Internet Requirements

Overview

- FOIA Reading Rooms
  - What are we legally required to post?
  - What are the implications of “reading room” designation?
- FOIA Websites
  - Function
  - Contents
  - Maintenance
  - Proactive Disclosure
- FOIA, 1996 Electronic FOIA Amendments (E-FOIA), Executive Order 13,392

Subsection (a)(2): FOIA Reading Rooms

- All federal agencies must routinely make “reading room” records available for “public inspection and copying”

- *Exceptions:*
  - Records automatically published under subsection (a)(1)
  - Records offered for sale

Reading Room Records

- Automatic disclosure for *all* reading room records
- What is the purpose?
  - Creates informed citizenry and prevents agency secret law
  - Provides records of precedential value constituting working law of agency
  - Efficiently satisfies public demand

Reading Room Records: Considerations

- FOIA exemptions and privacy considerations still apply
- Remember security considerations
- Must provide a general index to the records
- Records categorized as “reading room records” are generally not subject to subsection (a)(3) FOIA requests

Reading Room Records: Four Categories

- FOIA's Three Original Categories:
  - Final Opinions & Orders
    - Specifically, "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases"
  - Statements of Policy & Interpretations
    - Specifically, "those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register"
  - Administrative Staff Manuals & Instructions
    - Specifically, "administrative staff manuals and instructions to staff that affect a member of the public"

Reading Room Records: Four Categories, cont.

- E-FOIA's "Hot Topics" Requirement
  - Specifically, records processed and disclosed in response to a FOIA request that "because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records"
- Hot Topics Considerations:
  - The "Rule of Three": third request triggers the requirement
  - Only applies to records previously disclosed under FOIA
  - Agency's best judgment determines likelihood of future requests
  - Hot topics records still must be processed in FOIA requests

Electronic Reading Rooms

- What is required?
  - Records created by agencies after November 1, 1996 must be posted electronically
  - Traditional reading rooms must still be maintained, but access to a computer monitor will suffice
  - Links to records may serve as an index
- Agencies should be mindful of the distinction between reading room records and discretionary postings

FOIA Websites - Functions

- Contain electronic reading rooms
- Provide public with FOIA information
- Proactive disclosures
- Vital to efficient and customer-friendly FOIA administration

FOIA Websites - Contents

- General FOIA Information
  - Reference guide
  - Agency regulations
  - FOIA points of contact
  - Annual reports
  - Any helpful information!
- Electronic FOIA Requests & Tracking

FOIA Websites – Contents, cont.

- Electronic Reading Rooms
  - Clearly index and link to electronic reading room records
  - Explain what is in electronic reading rooms
  - Provide conventional reading room access information
- Proactive Disclosures
  - Maintain separately from reading room records
  - Discretionary postings still need to be processed under FOIA
  - Highly encouraged under the Executive Order!
  - Satisfy public demand and prevent unnecessary FOIA processing

Website Maintenance

- Accuracy and timeliness are key to websites' roles in FOIA administration
- Quarterly website reviews should:
  - Check for "bad links"
  - Ensure contact information is accurate
  - Remove outdated information
  - Replace superseded information

Conclusion

- Compliance with legal requirements under FOIA and E-FOIA
- Importance of proper categorization of electronic records
- E.O. 13,392's emphasis on proactive and customer-friendly web